UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.435
25 May 2000

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE 435th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 May 2000, at 3 p.m.

Chairman: Mr. Burns

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Slovenia (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.00-42338 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Slovenia (continued) (CAT/C/24/Add.5)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, the members of the delegation of Slovenia took places at the Committee table.

2. Mr. YAKOVLEV (Country Rapporteur) read out the following text:

1. The Committee considered the initial report of Slovenia (CAT/C/24/Add.5) at its 428th, 431st and 435th meetings on 12, 15 and 17 May 2000 (CAT/C/SR.428, 431 and 435), and adopted the following conclusions and recommendations:

A. Introduction

2. The Committee welcomes the initial report of the Republic of Slovenia, which, although overdue since 1994, was prepared in accordance with the general guidelines of the Committee.

3. The Committee welcomes the initiation of a constructive dialogue with the State party and thanks the delegation for the additional oral information provided.

B. Positive aspects

4. The Committee notes that when ratifying the Convention on 15 April 1993, the State party did not make a reservation under article 20 and made the declarations under articles 21 and 22 of the Convention.

5. The Committee expresses its appreciation of the fact that the preparation of the initial report of the State party was done with the assistance of a specialized non-governmental institution.

6. The Committee notes as positive that the Constitution of the State party provides for a broad range of norms protecting the human rights and fundamental freedoms including the prohibition of torture.

7. The Committee notes with satisfaction that it has received no information about alleged perpetration of torture, as defined in article 1 of the Convention, in the State party.

8. The Committee welcomes the establishment of the special institution of the Ombudsman for the protection of human rights and notes with interest its effective and responsible work.

9. The Committee notes with satisfaction that the legislative provisions are guaranteeing the exclusion of evidence from the record in cases where it was obtained in violation of human rights and basic freedoms.

10. The Committee welcomes the amendments to the Criminal Procedure Act which provides for mandatory legal assistance to the suspect throughout the period of detention. The Committee further notes as positive the introduction of a number of measures alternative to detention during the preliminary investigation.

11. The Committee welcomes the adoption of the Code of Police Practice.

12. The Committee notes as positive the adoption of rules for the construction, renovation and maintenance of the police detention quarters.

13. The Committee welcomes the establishment of the Bureau for Management and Supervision of the Police and the Unit for Complaint Investigations in the General Police Directorate.

C. Factors and difficulties impeding the application of the provisions of the Convention

14. After gaining independence in 1991, the State party underwent a profound social, economic and political transition, successfully building a democratic state, which demanded great efforts and which may explain the late submission of the initial report.

D. Subjects of concern

15. The Committee notes the information provided in the report that in order to allow for the sanctioning of crimes of torture, "special transformation into Slovenia's positive criminal law" of the definition of torture, contained in article 1 of the Convention, is needed. The Committee further notes that the new Law on the Enforcement of Criminal Sanctions, introducing a new definition of torture, came into force on 23 March 2000. However, the Committee is concerned that such a definition has not been introduced into a criminal code and that substantive criminal law does not yet contain a specific corpus delicti torture and therefore is not an instrument for direct incrimination and appropriate punishment of persons guilty of torture.

16. The Committee expresses its concern with regard to allegations about instances of police ill-treatment and excessive use of force by police against members of the Roma population, which has reportedly resulted in severe injuries in some instances.

17. Concern is also expressed regarding allegations about the excessive use of force by the police in connection with arrests.

18. The Committee notes that the Aliens Act as a general rule precludes the expulsion of an alien to a country where he or she would be in danger of being subjected to torture. However, the Committee expresses its concern that article 51, paragraph 2 of the Act which allows for the derogation from the general rule in cases where a person constitutes a threat to public security, does not respect the State party's obligations under article 3 of the Convention.

19. The Committee is concerned about the sub-standard conditions in which asylum-seekers are housed in the State party.

E. Recommendations

20. Although the Committee welcomes the incorporation of a definition of torture, in accordance with article 1 of the Convention, into the domestic law relating to the enforcement of criminal sanctions, the Committee recommends that the State party should incorporate the definition also in the substantive criminal law.

21. The Committee recommends that the State party take necessary steps to prevent the misuse of force by the police against members of the Roma population and other minorities, particularly, in connection with arrests and detention.

22. The Committee recommends that the State party consider amending the legislation which permits the expulsion of an alien to a country where he or she would be in danger of being tortured, i.e. expulsion justified by the individual being a threat to public security, so that it meets the conditions required by article 3 of the Convention.

23. As a matter of priority, the Committee urges the State party to take all necessary measures to ensure that asylum-seekers are housed in conditions that comply with the requirements of article 16 of the Convention.

24. The State party is invited to submit its second periodic report by 14 August 2001.

3. Mr. ZORE (Slovenia) said his delegation was grateful for the fruitful dialogue and would duly inform the Government of the Committee's conclusions and recommendations.

4. The delegation of Slovenia withdrew.

The meeting was suspended at 3.10 p.m. and resumed at 3.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Recent reporting history under the principal international human rights instruments (HRI/GEN/4)

5. The CHAIRMAN invited the Secretary of the Committee to introduce a new annual document that contained a compilation of the reporting history of States parties to the principal

human rights instruments (HRI/GEN/4). The document, which had been the brainchild of Mr. Bruni himself, would be extremely valuable to all persons and organizations working in the field of human rights.

6. Mr. BRUNI (Secretary of the Committee) said that the document, which was over 350 pages long, had been prepared at the request of the eleventh meeting of the chairpersons of human rights treaty bodies, held in June 1999, and would be updated annually. It was a public document, available to all concerned both in hard copy and on the Internet. Countries were listed in alphabetical order, followed by a list of treaties to which they were a party, and their reporting status under each treaty. At the end of the document was a summary of overdue reports, listed by State party and by treaty. Mistakes could be corrected in updated versions. Since it was public, the new document should prove a much more effective means of reminding States parties of their reporting obligations than the usual practice of sending notes verbales.

Methods of work

7. The CHAIRMAN invited members to present their views and ideas regarding the continuing work of the Committee.

8. Mr. EL MASRY said, first, that he supported Mr. Mavrommatis' proposal to create, as provided for in rule 61 of the rules of procedure a working group to handle article 22 cases. In order to avoid creating an additional financial burden, he suggested that the working group could meet simultaneously with the Committee's usual sessions. Since in current practice each case was handled by one rapporteur, and since many cases were similar, it might prove more efficient if several rapporteurs met together several times during the course of a session.

9. Secondly, he said that the Committee must react to the increasing tendency of States to disregard its requests for interim measures during the consideration of cases. The matter was an important one, especially since there was in fact nothing in the Convention that made a request formulated by the Committee under the rules of procedure binding on States parties. The Committee should perhaps submit an opinion to the States parties and request them to issue a declaration to the effect that the rules of procedure were grounded in the Convention, and that disregard for them impeded the Committee's work.

10. Thirdly, the Committee should consider whether to record, in its decisions under article 22, the method by which a decision was reached, whether by consensus or vote, and the number of members that voted in favour, voted against, or abstained. It might be appropriate in that connection to review the rules of procedure to determine whether any loopholes or lacunae existed.

11. The CHAIRMAN said he feared that a review of the rules of procedure would be a much too time-consuming task. A working group might, however, be established to ponder whether the Committee should consider formulating a general comment on articles 5 to 9, which contained the Convention's jurisdictional provisions. Such a general comment would give guidance to States parties and might serve to catalyse other independent activities in the area of torture jurisdiction.

12. Ms. GAER expressed her support for the suggestion, made earlier in the session, that a general comment should be formulated on the definition of torture under article 1, and the need for States parties to incorporate that definition into their domestic legislation.

13. Mr. YAKOVLEV thought that the matter of universal jurisdiction would be worth contemplating, not only in so far as it related to the Convention against Torture, but also in relation to the broader matter of crimes against humanity.

14. The CHAIRMAN agreed that a general comment on universal jurisdiction as it related both to international criminal law and to the individual conventions would be very useful to all parties working to combat international crime.

15. The suggestion that a working group on article 22 might meet during the Committee's sessions seemed impractical: the Committee was too small to allow some members to absent themselves during plenary meetings. The Committee should, in his view, identify the most effective means of carrying out its work, including the establishment of pre- or inter-sessional working groups, and submit its proposal to the Office of the United Nations High Commissioner for Human Rights, which would look into the matter of procuring funds.

16. Ms. GAER said that the establishment of a working group to meet during a Committee session would reduce the time available for regular Committee meetings. The pattern adopted by other committees could be followed: for example, a working group could meet immediately prior to a normal Committee session or between sessions.

17. The CHAIRMAN said that it was always useful in any body to examine the objectives and calculate the most effective method of achieving them. Other, larger committees had an advantage in terms of additional working modalities. If the secretariat could prepare all the obvious issues for country rapporteurs and even do some preliminary drafting of conclusions and recommendations, it would take much of the burden off the rapporteurs, though they would still of course have to ensure that all relevant questions were posed. The necessary resources for that would, he believed, be made available for the next session. An inter-sessional working group could, he thought, be very useful if given the right terms of reference, and for maximum efficiency should meet one week before the session. Historically speaking, the Committee had been a self-funding body operating on a shoestring and consequently had not participated in the development of the working methods adopted by other committees. The time had come for it to do so.

18. Mr. YAKOVLEV thought that if working groups were established they would have to be assigned two distinct kinds of task: firstly preparation in regard to specific facts or reports to be discussed in the Committee and, secondly, formulating commentaries on, for example, the problems posed by States failing to comply with the Committee's requirements on particular issues. He was not quite clear how a working group would operate in relation to subjects anticipated for future sessions. Some individual country reports would have been received while others would be overdue, complaints would be received at unforseeable times, and so on.

19. With regard to the Rules of Procedure, it was essential to determine the Committee's general jurisdiction, which could be extended to allow the Committee to initiate amendments to the Convention for example.

20. The CHAIRMAN said that several different kinds of working group had been proposed. A principal working group might be designated to deal with a particular subject assigned by the Committee and prepare a general comment on it. A general comment was essentially a statement by a body relating to its understanding of the range of issues it should cover in its discussions. In addition, a smaller group could meet in the week preceding a Committee session to look at all the communications received and prepare drafts for the Committee. That was a practice already followed by the Human Rights Committee. Another function that might be assigned to a working group was that of preparing questions in advance for States parties, but such a step appeared to be a long way in the future for the Committee. If a working group on communications were established, that might be more efficient than the current system, whereby files were assigned by the Chairman of the Committee to individual members depending on the language in which the communication was written and on the experience of the members in dealing with such matters. With the help of a working group, the Committee would be able to deal with 10 or 11 communications during each session.

21. The Committee would still need, however, to deal on an ongoing basis with questions of interim measures under article 3. An individual rapporteur might be appointed for that purpose if there were anyone interested and equipped with the necessary e-mail and other facilities.

22. Mr. YU Mengjia said that it might be useful for the Committee to adapt the general comments made by other treaty bodies to its own needs. The experience of other committees could be applied to the Committee's own particular concerns.

23. The CHAIRMAN said that within any system it was important to be aware of the practices of other related bodies. In exercising its jurisdiction, the Committee must be conscious of the impact of the work of other committees on it and vice versa.

24. Mr. GONZÁLEZ POBLETE agreed that a working group to deal with matters under article 22 of the Convention would help to lessen the burden imposed by individual communications on the Committee. With regard to article 19, in one sense it was fortunate that countries were not up to date with their submissions; otherwise the Committee would be unable to deal with the workload. In that regard, more specific guidelines relating to the content of the reports submitted by States parties appeared to be necessary, as States tended to have different understandings of particular articles of the Convention. It was necessary to expand on the list of standard questions prepared by the secretariat and to give a clearer explanation of the actual scope of each article, in particular articles 5 to 9. If those elements existed, the country rapporteurs could anticipate and point out to States the omissions they had made, thereby eliminating the need to wait before the required information was provided. Similarly, if a series of general comments were formulated on individual articles, States parties would have more precise guidance on the range of subjects to be dealt with in their reports.

25. Mr. YAKOVLEV agreed that a series of general recommendations should be made with regard to the information to be provided by States parties in their reports. In addition Committee members should always be able to ask any further questions as they saw fit.

26. The CHAIRMAN agreed. All the Committee members were independent experts, and were both entitled and obliged to participate fully in the work of the Committee. Any method established should not prevent members from asking questions.

27. In more general terms, there were different ways of accomplishing the goals set by the Committee. One of the most important questions in that regard was the provision of resources. The administration had agreed to provide the means necessary for the secretariat to spend time formulating standard questions and would similarly assist the rapporteurs with their preparation of conclusions and recommendations. A fuller discussion was still required on the establishment of a working group to be assigned the task of preparing at least one general comment in time for the next committee session. By then, the resources required to effect changes in the methodology used to deal with article 22 communications might not yet be available. However, if they were available and the Committee members agreed that they should be used in that way, it would be preferable for that agreement to be unanimous.

The meeting rose at 4.30 p.m.